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6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT TACOMA

9                   CHRISTOPHER MILLER,  
10                   Petitioner,  
11                   v.  
12                   KENNETH QUINN,  
13                   Respondent.

Case No. C06-5694RJB

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17                   ORDER DENYING CERTIFICATE  
18                   OF APPEALABILITY

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20         This matter comes before the court on the petitioner's Notice of Appeal. Dkt. 20. The court  
21 must consider whether to grant or deny the petitioner a Certificate of Appealability. *See* 28 U.S.C.  
22 2253(c)(3). The court has reviewed the record herein, including respondent's response (Dkt. 23)  
23 and petitioner's reply (Dkt. 24).

24                   PROCEDURAL HISTORY

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26         On April 19, 2007, U.S. Magistrate Judge J. Kelley Arnold issued a Report and  
Recommendation, concluding that petitioner's habeas claims were unexhausted and procedurally  
barred, and recommending that the petition should be dismissed with prejudice. Dkt. 16. On May

1 18, 2007, the court adopted the Report and Recommendation and dismissed the petition as  
2 unexhausted and procedurally barred. Dkt. 18. Petitioner has now appealed to the U.S. Court of  
3 Appeals for the Ninth Circuit. Dkt. 20.

4 **STANDARD FOR GRANTING A CERTIFICATE OF APPEALABILITY**

5 The district court should grant an application for a Certificate of Appealability only if the  
6 petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. §  
7 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner  
8 must make a showing that reasonable jurists could debate whether, or agree that, the petition should  
9 have been resolved in a different manner or that the issues presented were adequate to deserve  
10 encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (*quoting*  
11 *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). When the court denies a claim on  
12 procedural grounds, the petitioner must show that jurists of reason would find it debatable whether  
13 the petition states a valid claim of the denial of a constitutional right and that jurists of reason would  
14 find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*,  
15 120 S.Ct. at 1604.

16 **DISCUSSION**

17 This court dismissed the petition as unexhausted and procedurally barred. The case was  
18 therefore dismissed on procedural grounds. There is nothing in the record that would support a  
19 conclusion that jurists of reason would find it debatable whether the petition states a valid claim of  
20 the denial of a constitutional right and that jurists of reason would find it debatable whether this  
21 court was correct in its procedural ruling. Petitioner’s habeas claims were unexhausted in state  
22 court; the claims would be procedurally barred if he attempted to exhaust them now. The Certificate  
23 of Appealability should be denied.

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1 Accordingly, it is hereby **ORDERED** that a Certificate of Appealability is **DENIED**.

2 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to  
3 any party appearing *pro se* at said party's last known address.

4 DATED this 2<sup>nd</sup> day of July, 2007.

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7 Robert J. Bryan  
United States District Judge

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